Banner Tire Company *and* District 9, International Association of Machinists and Aerospace Workers, AFL-CIO. Case 14-CA-15039

March 5, 1982

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On October 29, 1981, Administrative Law Judge Claude R. Wolfe issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings,[1] findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Banner Tire Company, Belleville, Illinois, it officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

Additionally, we are satisfied that Respondent's contentions that the Administrative Law Judge was biased are without merit. There is nothing in the record to suggest that his conduct at the hearing, his resolutions of credibility, or the inferences he drew were affected by any bias or prejudice.

[2] In accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

DECISION

STATEMENT OF THE CASE

CLAUDE R. WOLFE, Administrative Law Judge: This case was heard before me in St. Louis, Missouri, on August 24, 1981, pursuant to charges filed on June 5, 1981,[1] and complaint issued on June 30 and amended at the hearing. The complaint alleges that Respondent has violated the Act by discharging Kenneth F. Strube and engaging in several independent violations of Section 8(a)(1) of the Act.

Upon the entire record and my careful observations of the witnesses' demeanor as they testified, and after consideration of the helpful post-trial briefs filed by the parties, I make the following findings and conclusions:

I. JURISDICTION

Respondent is a Missouri corporation engaged in wholesale and retail sale and installation of tires and other automotive parts in Illinois, Missouri, and Florida. The facility involved herein is located in Belleville, Illinois. The complaint alleges, the answer admits, and I find that Respondent meets both the retail and wholesale jurisdictional standards established by the Board, and is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The Charging Party, District 9, International Association of Machinists and Aerospace Workers, AFL-CIO, herein Machinists or IAM, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 50, herein called Teamsters, are labor organizations within the meaning of Section 2(5) of the Act.

III. SUPERVISORS AND AGENTS

In answer to the complaint Respondent admitted that John J. Alexander was retail sales manager and Jim Smith was store manager, but denied they were either supervisors within the meaning of Section 2(11) of the Act or agents of Respondent. After considerable evidence was adduced with respect to this issue, Respondent agreed on the record, in accordance with that evidence, that Alexander and Smith are agents and supervisors within the meaning of Section 2(11) of the Act. I so find.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

The Facts Found[2]

The Charging Party has had a contract with Respondent covering the alignment mechanic at Respondent's Belleville, Illinois, store for a number of years, including the period encompassed herein. Cyril Hoffmann, the predecessor to Kenneth Strube in that job, had worked 16 years for Respondent and was paid wages and received fringe benefits in accordance with the Machinists

[1] All dates herein are 1981, unless otherwise noted.

[2] The facts found are primarily derived from the credible testimony of Kenneth Strube, the alleged discriminatee, and Roger Poole, business agent for the IAM, because most of it is uncontroverted and their credibility was superior to that of Respondent's witnesses on points of conflict. Strube and Poole were decidedly superior to Respondent's other two witnesses in terms of both detailed recall and comparative testimonial demeanor. The testimony of Store Manager James Smith is fragmentary and corroborative of that of Poole and Strube in significant respects. John Alexander, Respondent's retail sales manager, was inclined to be evasive, and did not impress me as a candid witness.

contract.[3] Hoffmann retired at the end of March 1981. Respondent has a collective-bargaining agreement with the Teamsters covering employees at its other stores and all employees at its Belleville store except the mechanic who does alignment and other front end work on automobiles.

IAM Business Agent Poole called Respondent's Belleville store manager, Smith, on April 1 or 2, and asked him if he planned to hire an employee named Bergman for the front-end work. Smith responded that the Company wanted someone with more mechanical knowledge than Bergman because it planned to expand their service operation. Poole promised, and Smith agreed, to send over some out-of-work Machinists members for interview.

Kenneth Strube was interviewed by Alexander and Smith on April 2.[4] He gave them a job application and a resume which included the information that he was a member of the IAM. Strube did not know at the time that the job applied for was covered by an IAM contract. Alexander told Strube that he was looking for a mechanic with all around experience to do front-end and alignment work, as well as other minor repairs when the front-end and alignment work was low. Alexander then told Strube that he saw from the resume[5] that Strube was a member of the IAM. Strube said he was. Alexander then offered that Strube would have no problems at all transferring from the IAM to the Teamsters Union. Alexander concedes that he told Strube he must join the Teamsters Union. Strube agreed to do so. Alexander offered the job at $7.50 per hour (the highest rate in the Teamster contract), and a bonus of 10 percent of all business he produced over $3,500 per month.[6] Hoffmann had not had such a bonus arrangement. Strube accepted, stating he had been laid off for quite a while. Alexander assured him that there had never been any layoffs at Banner and they did not expect any.

Alexander also testified before me that there had never been any economic layoffs before Strube.

Strube started work on April 6. About 2 weeks later he saw an IAM sign in the service pit. He asked Hoffmann, who had remained on the job a couple weeks to train Strube, "how come." Hoffmann explained he was an IAM member. Strube called Poole the same day, telling him he was being paid Teamsters wages and just found out it was a Machinists job.

A couple of days later, Strube talked to Smith about the problem and was informed that Smith would find out from St. Louis, Respondent's main office location, which union Strube should join. On April 29, Smith told him St. Louis had said Strube should join the Teamsters Union.

On May 1, Smith called Poole and asked him what to do with some dues authorization forms he had received from the IAM with respect to Strube. After some conversation about the necessity of completed IAM forms for Strube, Smith asked Poole to send him a copy of the IAM contract, and advised Poole that Banner would get out of that contract if there were any possible way to do it. Poole pointed out that the Machinists contract with Respondent covered Strube's job, and stated that it would continue to and the IAM would fight Respondent for that work. Poole forwarded a copy of the contract to Smith that day.

Poole stopped by Respondent's Belleville facility about 11 a.m. on May 26. After talking briefly to Strube, he proceeded to Smith's office where he asked if the situation had changed with respect to Strube's IAM membership. Smith said it had not, and Poole advised him of payments due to pension and health and welfare funds on Strube's behalf. Smith told Poole such payments were up to the St. Louis office, and, on Poole's request, referred him to Alexander as the man in charge.

Smith agrees that the message that the St. Louis office wanted Strube to join the Teamsters Union was conveyed to Strube several times, and that he asked Strube to go down and sign up with the Teamsters in accordance with this desire of Respondent. Shortly after noon on May 26, Smith told Strube to clean up and go to the office because there was a Teamsters representative there wanting to talk to Strube. Strube did so, as did Smith who was present during the ensuing conversation. When Strube arrived, he was met by Teamsters Agent Hicks who handed him some papers and said he wanted Strube to fill them out to join the Teamsters. Strube ventured that he did not think he should because he did not think the IAM would condone it. Hicks then advised Strube the IAM was getting out of the tire business and the Teamsters Union was taking it over. Strube suggested Hicks talk to the IAM about his membership. Hicks agreed that would be a good idea, and left. After Hicks left, Strube asked Smith if his work was satisfactory, Smith said he had no complaints.

At or about 11 or 11:30 a.m. on May 29, Poole telephoned Alexander and told him that he understood Respondent planned to operate the Belleville facility with Teamsters and had been trying to force Strube to join the Teamsters Union. Poole continued that the IAM

---

[3] After considerable evasion John Alexander, Respondent's retail sales manager, conceded that he knew Hoffmann was a member of the Machinists and fringe benefits were paid on his behalf to "somebody," but incredibly denied knowing there was a contract with the Charging Party covering Hoffmann.

[4] The record does not show whether he was referred by Poole, but I conclude he was not because he was not aware the job was covered by a Machinists contract.

[5] The resume was not returned to Strube and Respondent did not proffer it at hearing.

[6] Respondent's contention that Alexander told Strube that "Banner expected him to produce $3500.00 per month in business" is an interpretation of a "yes" answer on cross-examination to a phrase reading "there was conversation about a quota of $3,500 per month" which is part of a considerably longer compound question. There is no credible evidence that Strube was expressly told he must, as a condition of employment, do at least $3,500 business per month. Alexander's testimony that Strube agreed he would be under a probationary period and that there was a $3,500 "quota" is accorded little weight because, in addition to my unfavorable impression of his general testimonial demeanor and his evasiveness and incredibility on other points, it contradicts his own testimony that he knew not of any IAM contract when Strube was hired; he makes no claim that he was referring to any Teamster contract provision; and Respondent expressly raised the IAM probationary clause as the authority pursuant to which Strube was terminated only after he was terminated. I regard Alexander's testimony as an effort to shore up Respondent's defense and a distortion of what actually occurred. I am convinced Strube was not given to understand that he would be fired if he did not do $3,500 worth of business a month, but was given to understand he would get a bonus if he exceeded that figure.

agreement covered Strube's work and Strube was and would continue to be an IAM member. Alexander replied that if Poole pursued this issue he (Poole) would ultimately force the termination of Strube. Poole advised Alexander that the two of them would have to do what they had to do and he intended to file an unfair labor practice charge against Respondent.[7]

That same day, at or about 4:45 p.m., Smith told Strube he was going to be laid off because Poole had told Alexander that he would put up pickets if Alexander did not pay Strube Machinists wages,[8] and Alexander said that he was not going to pay Strube the Machinists wages and would eliminate the job before he did. This information communicated to Strube by Smith obviously was provided to Smith by Alexander after his talk with Poole.

On June 1, Smith handed Strube a termination letter reading, "As of June 3rd your employment is terminated. Our program with you did not work out as planned." Smith did not explain what the latter sentence meant. Strube asked to talk to Alexander when he came in.

The following day, June 2, Strube met Alexander in the work area and asked why he had been terminated. Alexander explained that he had to use the word terminated because of the union contract. Strube asked that the termination letter be amended by adding that his work was good if it was. Alexander agreed to this and the notation "Work done was satisfactory," was added to the letter.[9] In the course of the conversation Strube accused Alexander of deceiving him by hiring him as a teamster to take over a machinist's job. Alexander denied any deception, and said that he thought Strube knew Hoffmann was a machinist. Strube said he did not because he had never seen Hoffmann before and knew nothing about the job until he was employed there. Alexander told Strube that the alignment rack was not making enough money and that was why Respondent was terminating the job, pointing out that Strube had not done $3,500 worth of business per month. The conversation closed with Strube expressing a willingness to work for Respondent if the union mess was straightened out, and Alexander expressing a willingness to have him back. I credit Strube that he did not tell Alexander or Smith that he would like to come back to work at $7.50 per hour.

On June 6, Smith wrote a letter to the IAM informing that Strube had been terminated on June 3 in accordance with a provision in the IAM contract that an employee accrued no seniority during the first 60 calendar days of employment but was probationary and could be terminated at the employer's sole discretion without any right of recourse to the grievance procedure. Thereafter, on June 9, Respondent mailed Strube a check for the difference between the Teamsters wages[10] he had received and the IAM contract rate.

Respondent proffered certain records to demonstrate that Hoffmann produced more income than Strube in a comparable period. The records show that Hoffmann produced $7,359 from April 6 through June 3, 1980, as compared to Strube's April 6 through June 3, 1981, income production of $4,901. They also show however that Hoffmann brought in $2,410.60 in May 1980 whereas Strube brought in $2,695 in May 1981, and that Hoffmann only brought in $2,992 in June 1980. These various figures must also be evaluated with recognition of the fact, attested to by Alexander, that Kevin Loyette was hired in January 1981 and did tires and repairs until he moved completely into mechanical work at the end of March 1981 when Hoffmann retired. I am persuaded that Loyette took over some of the work Hoffmann had been doing, and that therefore any comparison of the volume of Strube's work, all of which occurred after Loyette became completely involved in mechanical work, with the volume of Hoffmann's work prior to his retirement is meaningless because Hoffmann's work included in some unknown proportion work now done by Loyette. The joint production for Strube and Loyette for April was $5,323, and for May it was $5,407. The total of $10,730 greatly exceeds the $7,359 of Hoffman from April to June 3, 1980. Moreover, Alexander allots $1,550 of the total to Strube in April and $2,500 to Strube in May. This means Loyette did not exceed $3,500 in May, and Respondent avers he was on the same bonus system as Strube. Loyette is still working.

Turning to other statistics advanced by Respondent to compare monthly volume June 1980 through May 1981 in all nine of Respondent's facilities, I note there is no real basis on which to compare them because there are no statistics on customers' traffic, geographical, or exact services offered, *inter alia*. Moreover, the volume for the Belleville store fell below $3,500 per month for 2 months; for 6 months in another store; 8 months, including a period of 5 consecutive months, in another; 1 month in another; and 7 months, including 5 consecutive months in yet another. In short, Respondent's own records show three other stores repeatedly fell below the $3,500 mark, which was applied to all of them, during a period the Belleville store in fact only fell below the mark twice in June and August 1980. The only three stores which did not fall below $3,500 any month in volume were stores whose volume was clearly much higher than the others at all times for reasons not shown in the record.

Conclusions

The General Counsel has shown by a preponderance of the credible evidence that Respondent sought to extend the coverage of its collective-bargaining agree-

[7] I do not credit Alexander's version that he told Poole that at the rate business was going, below normal, Respondent would have to lay off Strube.

[8] The IAM contract with Respondent sets forth $9.60 per hour as the wage for "front end man."

[9] It is clear that Respondent had no complaint about the quality of Strube's work.

[10] Respondent's letter refers to the difference between "apprentice wages" and journeyman wages, but the record clearly shows Strube was hired at Teamsters rates, and the IAM contract does not contain a $7.50 rate for apprentices. I conclude the use of the term "apprentice" was designed to disguise the fact that Respondent had been paying Strube wages set forth in a Teamsters contract.

ment with the Teamsters to the work performed by Strube, notwithstanding the presence of an IAM agreement covering that work. In furtherance of this objective Respondent ignored the IAM agreement which Respondent wanted to get out of, and attempted to require Strube to change his membership from the IAM to the Teamsters. Failing in that attempt it discharged Strube and closed down its alignment and other front-end work because Strube would not transfer his union allegiance and because the IAM would not surrender the work covered by its contract.

Certain statements to Strube by Respondent as well as his discharge violated the National Labor Relations Act, as amended.

Independent 8(a)(1) Violations

1. When Alexander told Strube on April 2 that he must join the Teamsters and would have no trouble transferring his membership from the IAM, he was clearly conditioning employment on such action, and was making an implied threat that Strube would not be employed if he did not so do. An employee cannot be required to abandon his union as a condition of employment,[11] nor can he be required to join a union not of his own choosing[12] particularly where as here that union has no statutory or contractual status entitling it to represent him. Accordingly, I find Alexander's statements violated Section 8(a)(1) of the Act because they reasonably tended to interfere with, restrain, and coerce Strube in the exercise of his Section 7 right to join a labor organization of his own choosing, or to refrain from joining a labor organization.

2. When Smith told Strube on April 29, and several other times, that Respondent's St. Louis office, probably Alexander who was Smith's supervisor, had said Strube should join the Teamsters Union, his statement amounted to a reiteration of the statements previously made to Strube by Alexander and violated Section 8(a)(1) of the Act for the same reasons the original statements by Alexander did.

3. Respondent, by its agent, Smith, directed Strube to meet with Teamsters Agent Hicks on May 26 and remained present while Hicks solicited Strube to join the Teamsters Union. I agree with the General Counsel that the pressure to join a union is almost irresistible when the employer arranges and attends a meeting with that union for the sole purpose of securing the employee's membership in that union. In this case that pressure was exacerbated by the previous unlawful statements of Smith and Alexander designed to coerce Strube into joining the Teamsters Union, and Smith's very presence tended to have an intimidating effect on Strube whose wages, hours, and working conditions were subject to Smith's control. Accordingly, I find that Respondent violated Section 8(a)(1) of the Act by summoning Strube to the meeting and also violated Section 8(a)(1) by remaining present while he was solicited by Hicks.

4. Smith's conduct in advising Strube on May 29 that Alexander had said he would not pay Strube the wages set forth in the IAM contract but would eliminate Strube's job before he did, accompanied by the advice from Smith that Strube was going to be laid off, requires little discussion. To advise an employee that his job will be eliminated and he will be laid off because the Union, acting on his behalf, has insisted he be paid the wages called for by an existing valid collective-bargaining agreement is one of the most chilling and coercive pronouncements imaginable, and clearly had a reasonable tendency to interfere with, restrain, and coerce Strube in the exercise of his Section 7 right to choose his own union. I find Smith did threaten Strube with discharge because he sought and received assistance from the IAM.

The Discharge of Strube

Respondent knew from his resume that Strube was a member of the Machinists when it hired him, and Alexander then solicited his transfer from the IAM to Teamsters membership. Respondent's motive is rather obvious. It wanted to get rid of the IAM contract and bring all its Belleville employees under the Teamsters agreement. When Strube resisted all efforts to get him to join the Teamsters and abandon the IAM, and Poole made it clear to Alexander the IAM would fight to retain its contract and represent Strube, Respondent resolved to eliminate the work and Strube, thus effectively achieving its initial purpose of all Teamsters representation.

Respondent summarizes its position as follows:

> Kenneth Strube was hired under a 60 day probationary period; he was given a quota of $3,500 of business to produce each month; the alignment business was slow; Banner suffered economic detriment to the effect that the alignment business was an unprofitable venture; and as a result Banner discharged Kenneth Strube as per its rights under the 60 day probationary period.
>
> Banner Tire's position is that Strube was discharged solely for economic reasons. Discharge of an employee for such a business justification is not a §8(a)(3) violation.

Although ably argued, Respondent's position is simply not supported by the credible evidence of record. With respect to the probationary claim, even though I do not credit Alexander's testimony that he was totally unaware of the existence of the IAM contract when Strube was hired, the very fact he so testified satisfies me that he certainly did not have that contract's probationary clause in mind or advised Strube of any such probationary period on hire. I am persuaded that Respondent seized upon the probationary clause as an afterthought in an effort to conceal the real reason for Strube's discharge.

Insofar as the $3,500 "quota" is concerned I have found that Strube was not told he must produce that amount of business as a condition of continuing employment, and Respondent's own records reflect that other locations, all purportedly on the same $3,500 "quota," repeatedly fell below that figure but no one was discharged but Strube so far as the record shows. Moreover, the Belleville facility in fact had a higher dollar volume of "repairs-parts-labor" during both April and

[11] *Ra-Rich Manufacturing Corporation*, 120 NLRB 503, 506 (1958).
[12] *Sav-On-Drugs, Inc.*, 227 NLRB 1638, 1643 (1977).

May 1981 than it had in any of the prior 10 months when Hoffmann was still employed. The real difference between Strube's volume and Hoffmann's volume results primarily from the assignment of part of Hoffmann's work to Loyette before hiring Strube. In these circumstances it is obvious, particularly since the work assigned to Loyette (who is apparently covered by the same Teamsters contract the Respondent persistently tried to force on Strube) produced more income than that assigned to Strube, that the Respondent seeks to rely on a situation which was patently predictable and within the knowledge of the Respondent from the outset of Strube's employment as reason for his ultimate termination. I am persuaded that the evidence requires a finding that the proffer of the "quota" as a defense is pure pretext, as is the claim of unprofitability which is not supported by evidence proffered or adduced but rests for its validity solely on Respondent's *ipse dixit.*

The failure of the purported reasons for discharging Strube gives rise to a fair inference of discriminatory motivation[13] and adds support to the General Counsel's already strong *prima facie* case that Respondent disposed of Strube in order to discourage membership in the IAM and encourage membership in the Teamsters Union. Accordingly, I find that the General Counsel has shown by a preponderance of the evidence that the discharge of Strube violated Section 8(a)(3) and (1) of the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. District 9, International Association of Machinists and Aerospace Workers of America, AFL-CIO, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 50, are labor organizations within the meaning of Section 2(5) of the Act.

3. By conditioning employment on membership in a labor organization, Respondent violated Section 8(a)(1) of the Act.

4. By soliciting and requiring an employee to abandon his union membership as a condition of employment, Respondent violated Section 8(a)(1) of the Act.

5. By directing an employee to meet with a union representative for the purpose of securing the employee's membership in that union, and by remaining present while a union representative solicited said membership, Respondent violated Section 8(a)(1) of the Act.

6. By threatening an employee with discharge for engaging in protected union activity, Respondent violated Section 8(a)(1) of the Act.

7. By discharging Kenneth Strube in order to discourage membership in one labor organization and encourage membership in another, Respondent violated Section 8(a)(3) and (1) of the Act.

8. The above-described unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

[13] *Shattuck Denn Mining Corporation (Iron King Branch)* v. *N.L.R.B.*, 362 F.2d 466, 470 (9th Cir. 1966).

THE REMEDY

In addition to the usual cease-and-desist and posting requirements, my recommended Order will require Respondent to offer Kenneth Strube unconditional reinstatement to his former job at its Belleville, Illinois, facility, and make him whole for all wages lost as result of the discrimination against him, such backpay and interest thereon to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950); and *Florida Steel Corporation*, 231 NLRB 651 (1977).[14]

The reinstatement of Kenneth Strube to the exact same job he was separated from is necessary because it appears to be the only job of comparable nature at the facility and is the only job at Belleville covered by the IAM contract which Respondent seeks to avoid by unlawful means. To permit Respondent to proffer alternative reinstatement would amount to giving Respondent license to accomplish the very end, total representation at the Belleville store by the Teamsters, that it sought to accomplish by the unfair labor practices found herein. Moreover, the alignment and other equipment formerly used by Strube in his work is still located at the Belleville store. The fact that Respondent is now subcontracting the work out which was previously performed by Strube is no obstacle inasmuch as the subcontracting is the result of an unfair labor practice and cannot prevail over Strube's reinstatement rights.[15]

Pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[16]

The Respondent, Banner Tire Company, Belleville, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Conditioning employment on membership in a labor organization.

(b) Soliciting and requiring employees to abandon their union membership as a condition of employment.

(c) Directing employees to meet with union representatives for the purpose of securing employees' membership in that Union and/or remaining present while union representatives solicit said membership.

(d) Threatening employees with discharge for engaging in protected union activity.

(e) Discharging employees, or otherwise discriminating in any manner with respect to their tenure of employment or any term or condition of their employment for the purpose of encouraging or discouraging union membership.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

[14] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[15] See *Everspray Enterprises, Inc.*, 253 NLRB 922 (1980).

[16] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

2. Take the following affirmative action designed to effectuate the purposes of the Act:

(a) Offer Kenneth Strube immediate and full reinstatement to his former job without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of earnings he may have suffered by reason of the discrimination against him in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this recommended Order.

(c) Post at its Belleville, Illinois, facility, copies of the attached notice marked "Appendix."[17] Copies of said notice, on forms provided by the Regional Director for Region 14, after being signed by Respondent's authorized agent, shall be posted by it immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that these notices are not altered, defaced, or covered by other material.

(d) Notify the Regional Director for Region 14, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[17] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT discharge or otherwise discriminate against our employees for the purpose of encouraging or discouraging union membership.

WE WILL NOT threaten employees with discharge because they engage in protected union activities.

WE WILL NOT condition employment on membership in a labor organization.

WE WILL NOT solicit or require employees to abandon their membership in District 9, International Association of Machinists and Aerospace Workers, AFL-CIO, or any other labor organization, as a condition of employment.

WE WILL NOT direct our employees to meet with union representatives for the purpose of securing their membership in that union, nor will we remain present at any meeting where union representatives solicit union membership from our employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer Kenneth Strube immediate and full reinstatement to his former job, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay he may have suffered as a result of our discrimination against him, with interest computed thereon.

BANNER TIRE COMPANY